


# Lehman Brothers International (Europe) (In Administration)

Update meetings with MFA / AIMA  
New York – 8 Oct 2009  
London – 9 Oct 2009

# Agenda

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- Introduction
  - Scheme of Arrangement
  - Contractual Solution
  - Indicative timeline
  - Other issues
  - Update on status of LBIE Administration
  - Q&A
  - Final remarks

# Introduction

## Objectives

- Outline the Administrators' revised strategy to return Client Assets
- Explain the Jurisdiction and the Scheme
- Outline the Contractual Solution
- Set out claimants Actions
- Update on progress of the LBIE Administration
- Provide opportunity for Q & A

# Introduction

## Key Messages

- Scheme for Client Assets remains the preferred route
- Scheme provides most certainty
- The Contractual Solution provides a framework:
  - To return assets while appeal process concludes
  - Backstops the impact of a failed appeal
- Express support for the Contractual Solution is essential
- Client Money proceedings commenced. 15-20 court days imminent
- Activities on the unsecured estate progressing very well
  - Some \$11bn in House recoveries to date
  - \$3.5bn collected in cash relating to client assets
  - 6,500 counterparties to resolve
- C.\$156bn in claims filed against affiliates

## Scheme of Arrangement



# Scheme of Arrangement

## Background references

- Scheme is subject to provisions of UK Companies Act 2006
- Documents available on [www.pwc.co.uk/lehman](http://www.pwc.co.uk/lehman)
  - Summary of Principal Terms of Scheme- “Mini Explan”
  - 5 & 7 August 2009 presentation to MFA / AIMA members
  - Q & A for MFA / AIMA for August presentation
  - Q & A jurisdiction judgement

# Scheme of Arrangement

## The jurisdiction issue

- Companies Act 2006 Part 26 Procedure
- Binds all creditors
- Normally compromises only contractual rights
- Scheme also affects proprietary rights
- Judgement adapted narrow and conservative approach
- Optimum Solution – so have appealed

# Scheme of Arrangement

## Basis of appeal

- CA 2006 Part 26 applies:
  - Where compromise or arrangement is proposed
  - Between company and its creditors
- Nature of compromise is not limited to rights in capacity as creditor only
- Statute does not require connection between status of those bound and the rights compromised
- Nature and Extent of variation of rights goes to classes and sanction discretion not jurisdiction
- Main purpose of Scheme is irrelevant to question of jurisdiction
- It was wrong to distinguish the proprietary rights of a secured creditor



# Scheme of Arrangement

## The appeal procedure

- Expedited hearing in UK Court of Appeal – 26 Oct 2009
- High Court recognised importance and interest of third parties
- Judgement likely mid / late November 2009
- Prospects inevitably uncertain
- Possibility of Appeal to UK Supreme Court

# Scheme of Arrangement

Scheme is the optimum solution

- Benefits
  - Bar date
  - Composite solution
  - Binding on all parties
  - Mutual releases
  - Uniform approach for all
  - Relatively quick
- No alternatives provide the equivalent comprehensive answer
- Can be revived if Appeal is successful
- Progress on client position reconciliation has continued unabated

# Scheme of Arrangement

Alternative  
proposals  
influenced by

- Attraction of a composite solution
- Desire to reduce Court involvement
- Recognition of level of market support for Scheme principles
- Desire to mitigate further delay

# Scheme of Arrangement

## Alternatives to Scheme

1. Bilateral return framework
  - One-to-one negotiation
  - Client indemnity
  - Credit wrap
  - Position improved post bar-date

➡ **Slow, expensive process without finality / certainty**
2. Series of Trust / Directions Applications to Court
  - Stand-alone
  - In combination with Modified Scheme

➡ **Cumbersome process / residual risk for clients**
3. Contractual Solution

## Contractual Solution



# Contractual solution

## What is it?

- A mechanism for regulating the return of Client Assets
- Contractually binding agreement incorporating substantially all terms of proposed Scheme, including:-
  - Bar Date to crystallise claimant population
  - Deal with proprietary rights and allocate stock shortfall
  - Determine financial position payable between LBIE and Clients
  - Costs of managing and returning client assets
  - Dispute Resolution
  - Distribution of LBI recovery
  - Provision of releases to signatory clients and LBIE

# Contractual Solution

What else will it do?

- Invitation to all clients to 'sign up'
- Binding and effective to all who sign
- Intended to provide mutual releases to all signatories
- Relatively expeditious and cost effective
- Can utilise Court Directions Applications as necessary
  - Stock shortfalls
  - Affiliate liens
- Can include a wider population than just Client Assets claimants if desirable

# Contractual Solution

Why is it in best interests of clients?

- No class issues
- No jurisdiction issues
- No restrictions on terms, but must be fair to unsecured creditors
- Distribution commences after Bar Dates have passed
- *Phase One:*
  - stock lines with no shortfalls (\$9.0bn)
  - May include stock lines with shortfalls if no non-signatories
- *Phase Two:*
  - stock lines with shortfall and non signatories (\$0.3bn)
- May seek Court directions to prioritise signatory claimants
- Non signatories only get distribution after Court Directions re: shortfalls, costs, appropriations etc.



# Contractual Solution

## Issues of non-signatories

- Not binding on non-signatories:
  1. Assets transferred / returned subject to claims of non-signatories
  2. Non-signatories not subject to terms of the contract
    - bi-lateral negotiation still required
- Probably requires a Directions Application to deal with non-signatory claimants:
  - where there is a shortfall in any stock line
  - to deal with costs for non-signatories
- May update prioritisation criteria

# Contractual Solution

## Implementation

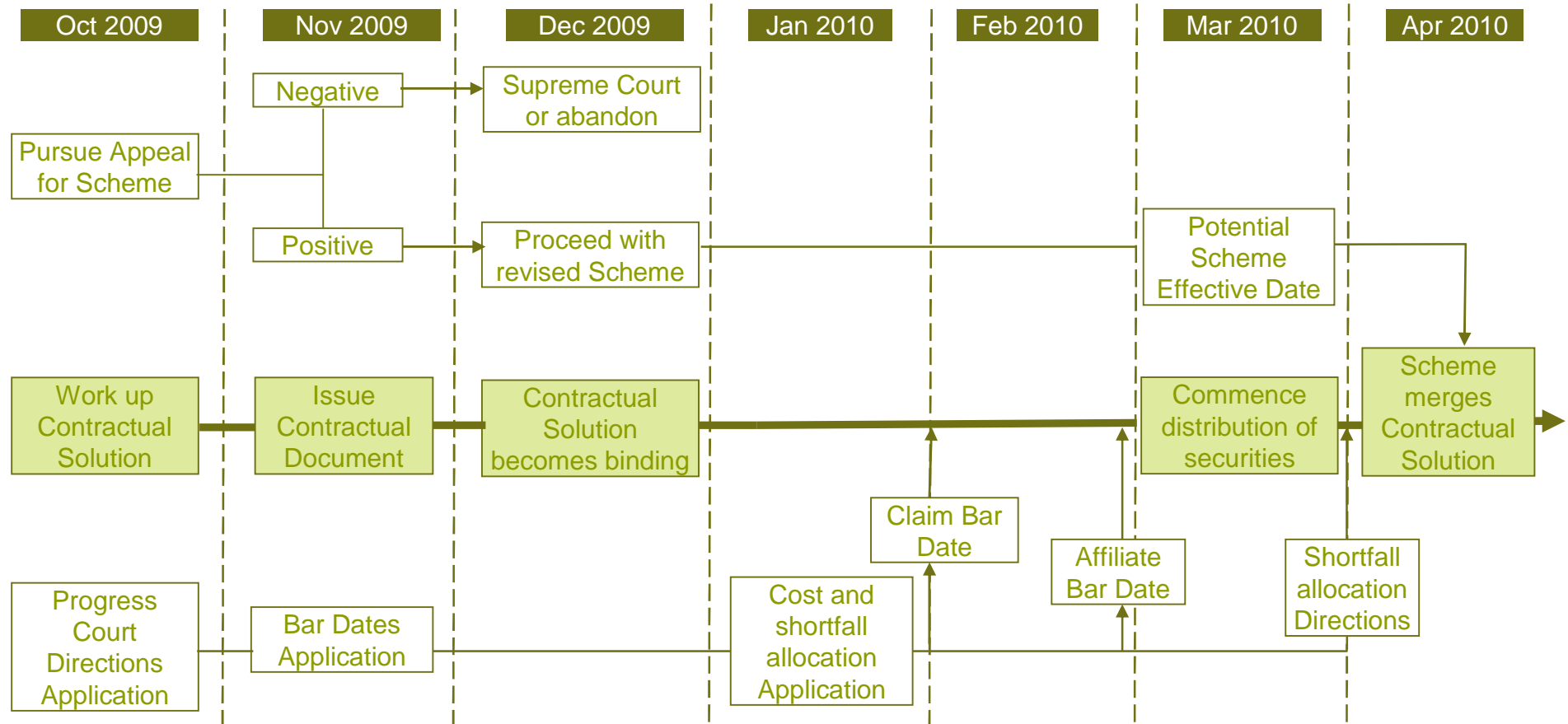
- Based on Terms of Draft Scheme
- Target finalisation / distribution in w/c 23 Nov 09
- Documentation
  - Explanatory Document
  - Contract Document
  - Form of Accession
- Offer open for acceptance to all
- Closing date (target 4 weeks) can be extended
- Minimum acceptance threshold will be high ~ 90% by value
- Claim valuation now based on Settlement Date data
- Expectation to hold full client meeting – early Dec 09
- Becomes effective if / when sufficient Clients have signed

# Contractual Solution

## Court Directions Applications

- Bar Date
  - Proceed as soon as practical
  - Applicable to Contractual Solution (or Scheme)
  - Will be 'ex-parte' under notice
  - Targeting 31 January 2010
- Bar Date for Affiliate Retention Claims
  - Target 28 February 2010

# Timeline



## Other Issues

### LB

- Regular dialogue with LBI Trustee
- \$5.9bn held by LBI at 15 Sept 08
  - 90% of client positions had stock record movements
  - Significant settlements in 15/9 – 19/9. Reconciliation ongoing.
- Allocation motion
  - filed 6 Oct 09
  - Hearing 18 Nov 09
- Dividends & Coupons
  - Subject to judicial determination
  - Trustee view – not part of general estate

## Other Issues

### LBIE

- LBIE expects to distribute receipts from LBI Trustee to clients
- Timing of LBI distribution:
  - Allocation motion
  - Barclays dispute
  - Affiliate Claims
  - Other matters
- Progressing protocol
- Constructive cooperation

## Other Issues

### Other Business

- Further market promotion
- Use LBIE or LBIE Creditors' Committee for reference
- Material benefits to general unsecured creditors
- MFA / AIMA membership support vital
  - If insufficient positive votes "for", then will fail
  - Cannot be supported by inaction or abstention

A vote in favour is essential for this to be viable

## Update on LBIE Administration





## Update on LBIE Administration

### Reminder of Administration objectives

- Realise House assets
- Return Trust Property
- Identify unsecured claims
- 6 Month update report to creditors to be issued on 15 Oct 09

## Update on LBIE Administration

### Gross recoveries

- Realised cash of \$13.8bn (gross) to 14 Sept 2009 comprising
  - \$10.2bn House asset recoveries
  - \$0.9bn pre-Administration Client Money
  - \$2.6bn post-Administration possible client related receipts

Cash recoveries	Mar 2009	Sept 2009
House	\$5.7bn	\$10.2bn
Client	\$3.0bn	\$3.5bn
<b>Total</b>	<b>\$8.7bn</b>	<b>\$13.8bn</b>

- \$11.7bn (net) in hand at 14 September 2009
- Further \$800m realised (House) since 14 Sept.

## Update on LBIE Administration

### Counterparties

- Over 6,500 institutional counterparty relationships to resolve
- Each counterparty had many open transactions
- Material progress in reconciling and settling positions with over 1,400 counterparties
- Realised \$6.9bn from receivable counterparties to 14 Sept 2009
- Sophisticated recovery framework co-led with senior Lehman team
- 2,700 counterparties have submitted claims
  - c.\$21.4bn claimed vs. SoA c.\$7bn
  - Claims > SoA values by c.300% on average
- Now commencing review of claims
- No “bar date” for unsecured claims yet

## Update on LBIE Administration

### Intercompany

- Claims totalling c\$156bn (gross) by LBIE against affiliates
  - Claiming c.\$38bn from LBHI when final claims submitted
  - LBSF / LBF combined balance of c.\$30bn under “side-letters”
  - No visibility as to level of recoveries from any estate
  - Claims not yet admitted by debtor entities
  - Includes significant guarantee claims against LBHI
  - We anticipate extensive review process
- Ongoing working relationship with key affiliates
- Initiated proceedings in UK High Court to establish ownership of c.\$6.0bn securities

## Update on LBIE Administration

### Trust Property Client Assets

- \$35.2bn held in client inventory at 15 Sept 2008 for 553 clients
- \$13.3bn has been returned to 51 clients
- Market value \$5.4bn lower than at 15 Sept 2008
- LBIE controlled depots have a shortfall of ~\$0.3bn
- \$8.9bn of client assets and \$0.4bn redemption proceeds are held at LBIE controlled depots.
- Claims for \$6.9bn of assets have been asserted against LBI & LBJ. No visibility on returns

## Update on LBIE Administration

Trust Property  
Client depot  
securities

	\$bn
<b>Segregated assets at 15/9/08</b>	<b>35.2</b>
Returned	(13.3)
Redemptions now held as cash	(0.4)
Assets held by Affiliates	(6.9)
Assets frozen by custodian	(0.3)
MTM movement	(5.4)
<b>Held at 14/09/09</b>	<b>8.9</b>

## Update on LBIE Administration

### Trust Property Directions Application IPBA Clause 5.2

- Clause in LBIE IPBA (charge version)
  - cash received by LBIE for client is held on title transfer basis
  - Similar provision under other agreements (eg MLA)
- Question whether cash is trust or unsecured estate property
- Proceedings commenced
- Hearing in UK High Court this week
- Administrators advised could be “Administration expense”
  - Payable to owner of asset
- Outcome will clarify treatment of such proceeds

## Update on LBIE Administration

### Trust Property Client Money

- Client Money \$0.9bn recovered to date
- Bankhaus
  - \$1bn
  - Discussions with German administrator
  - Request to German Deposit Protection Fund
  - Determination of claim status in coming weeks
- Client Monies hearing from 9 Nov 2009
  - 15 to 20 Court days
  - Judgement and guidance expected by early 2010
  - Entitlement can not yet be determined
  - Substantial Affiliate claims asserted



## Update on LBIE Administration

### Future actions

- 12 months of significant progress
- Continued focus on:
  - Realisation of assets / closing out CP positions
- Increased emphasis on unsecured CP claims
- Pursue mechanism for the for the return of Client Assets
- Ongoing support to affiliates where benefits LBIE
- Evolution of Operating Model and Management Structure

## Q & A

